RHB BANK BHD

v.

COMAX SDN BHD & ANOR

HIGH COURT MALAYA, JOHOR BAHRU
ZAINUN ALI J
[ORIGINATING SUMMONS NO: 24-562 OF 1998]
31 DECEMBER 1998

CIVIL PROCEDURE: *Interpleader summons - Stakeholder's interpleader - Principles - Monies deposited in bank account - Adverse claims - Whether possible for interpleader to be sued by at least two persons - Pre-conditions under O. 17 r. 3(3) Rules of the High Court - Whether satisfied*

CIVIL PROCEDURE: *Interpleader summons - Stakeholder's interpleader - Crossed cashier's order presented at bank - Transfer of funds to nominated payee - Adverse claim by third party having similar name to nominated payee - Whether a mistake - Whether validity of cashier's order restricted to drawer and nominated payee - Cashier's order marked "Account Payee" and "Not Negotiable" - Whether negotiability of instrument affected - Bills of Exchange (Amendment) Act 1998, s. 81A*

The plaintiff, a bank, filed an interpleader summons seeking an order to determine the rightful claimant to monies deposited in account No. 20049004486 with the plaintiff by a cashier's order amounting to RM650,000. The cashier's order was drawn by the 1st defendant under the name of Abrasive Waterjet Sdn Bhd and was marked "Account Payee" and "Not Negotiable". The plaintiff subsequently received notification from the 1st defendant on 2 April 1998 that the said cashier's order had been mistakenly credited into the account of the 2nd defendant, Abrasive Waterjet Services Sdn Bhd, and the plaintiff demanded a refund of the monies claiming the transfer of funds was unauthorised. The plaintiff responded by freezing the 2nd defendant's account. Upon discovering this, the 2nd defendant wrote to the plaintiff demanding the freeze on their account be lifted.

The 1st defendant contended that they were the true owners of the monies and that the plaintiff should have been put on inquiry when the payee was not the nominated payee. They further contended that by allowing withdrawals from the 2nd defendant's account up till 3 April 1998 when the plaintiff had already been put on notice on 2 April 1998 regarding the unauthorised transfer, the plaintiff had colluded with the 2nd defendant. The 2nd defendant submitted that since they had an existing account No. 20049004486 with the plaintiff, the transaction was valid and the plaintiff had acted wrongfully in preventing

them from operating their account. The 2nd defendant further claimed that the monies deposited into their account represented a refund under a rescission of an agreement between themselves and the 1st defendant.

Prior to the hearing proper, the 1st defendant raised a preliminary objection to the application on the grounds that the plaintiff had failed to comply with the pre-conditions in O. 17 r. 3(3) of the Rules of the High Court, 1980 ('RHC'), namely: (a) that the plaintiff must show it had no interest in the subject matter in dispute other than for charges or costs; (b) that the plaintiff had not colluded with any of the claimants to the subject matter; and (c) that the plaintiff was willing to pay the monies into court or to dispose of it in such manner as the court thought fit.

Held:

[1] Although it could not be denied that the plaintiff might face a setback since the monies in the account were depleted and that it had to make good the full amount deposited *ie*, RM650,000 to whoever was the rightful claimant, this could not be construed as the plaintiff having an "interest" in the matter.

[1a] The act of the plaintiff in depositing the monies into the 2nd defendant's account could not amount to collusion with the 2nd defendant. This was borne out by the plaintiff's subsequent act of initiating action to freeze the account, to stave off any further operation of the said account in view of the competing claims made on the monies.

[1b] The final pre-condition of O. 17 r. 3(3) RHC was satisfied where the plaintiff stated in its affidavit that it was willing to pay the monies into court or to dispose of it in such manner as the court thought fit.

[2] Under s. 81A of the Bills of Exchange (Amendment) Act 1998, crossed cheques are no longer negotiable instruments since its validity is restricted to the parties thereto. It is in effect a "Pay Order" to the bank by a drawer to the named payee only.

[3] The omission of the word "Service" in the 2nd defendant's name was not a mis-spelling or mistake since the two companies were two completely different entities and the nominated payee was Abrasive Waterjet Sdn Bhd and not the 2nd defendant.

[3a] The cashier's order was crossed and by virtue of s. 81A of the Bills of Exchange (Amendment) Act 1998, the validity of the cashier's order was restricted to the parties thereto *ie*, between the drawer and the nominated payee. Thus, there was no delivery of the cashier's order to the 2nd defendant and the 1st defendant remained the true owner thereof.

[4] Since there was no delivery of the cashier's order to the 2nd defendant, the 2nd defendant had no basis for a claim as opposed to the claim of the 1st defendant, against the plaintiff. Thus the plaintiff had failed to establish a real foundation for the expectation of being sued by at least two persons.

[Plaintiff's application dismissed with no order as to costs.]

Case(s) referred to:
Cave v. Capel [1954] 1 QB 367 ***(refd)***
Chin Leong Soon & Ors v. Len Chee Omnibus [1970] 2 MLJ 228 ***(refd)***
De La Rue v. Hernu, Perom & Stockwell Ltd [1936] 2 KB 164 ***(refd)***
Gerhad v. Montagu & Co [1889] 61 LT 564 ***(refd)***
Greatorex v. Shackle [1895] 2 QB 249 ***(refd)***
Mahadevan & Anor v. Manilal & Sons (M) Sdn Bhd [1984] 1 MLJ 266 ***(refd)***
Murrieta v. South American Co [1893] 62 LJ QB 396 ***(refd)***
National Bank v. Silke [1891] 1 QB 435 ***(refd)***
Sun Insurance Office v. Galinsky [1914] 2 KB 543 ***(refd)***
The Rubber Industry Board v. Hongkong & Shanghai Banking Corp [1957] MLJ 103 ***(foll)***
Tucker v. Morris [1832] 1 C & M 73 2 LJ Ex 1 ***(refd)***
Watson v. Park Royal Caterers Ltd [1961] 2 All ER 146 ***(refd)***
Woodland Development v. Chartered Bank [1988] MLJ ***(refd)***

Legislation referred to:
Bills of Exchange (Amendment) Act 1998, s. 81A
Rules of the High Court 1980, O. 17 r. 3(3)(a), (b), O. 57 rr. 1, 2

For the plaintiff - BL Chang; M/s Lim & Hooi
For the 1st defendant - Ms Navamani (PK Nathan & Mr Ng with her); M/s Navamani Arumugam
For the 2nd defendant - HK Yoong; M/s HK Yoong

Reported by Cindy Chan

JUDGMENT

Zainun Ali J:

In this interpleader summons, the plaintiff seeks an order of court to determine the rightful claimant to the monies deposited in account No. 20049004486 with the plaintiff, by a cashier's order No. 664719, amounting to RM650,000 which is the subject matter of this application.

Though the facts are in themselves flexuous, what emerged therefrom is that, a cashier's order as described above was drawn by one Balakrishnan s/o Subramaniam of the 1st defendant under the name of Abrasive Waterjet Sdn. Bhd. with an account number 20049004486 at the plaintiff's bank. The said cashier's order is marked "Account Payee" and "Not Negotiable".

On 2 April 1998, the plaintiff received a letter from the 1st defendant stating that the said cashier's order was wrongly credited into the 2nd defendant's account at the plaintiff bank. The 1st defendant demanded a return of the said cashier's order, on the ground that the monies was transferred from the 1st defendant's account, the transfer of which was unauthorised. (See exh. A in Tan Keng Soon's affidavit affirmed on 16 April 1998). This is reinforced by the letter from the solicitors of the 1st defendant dated 4 April 1998. (See exh. D in Tang Keng Soon's affidavit affirmed on 16 April 1998).

The plaintiff then took action to freeze the 2nd defendant's account.

The 2nd defendant wrote a letter dated 6 April 1998 to the plaintiff, demanding that the freeze on the account be lifted. (See exh. E in Tan Keng Soon's affidavit).

The said cashier's order was marked "Account Payee" and "Not Negotiable" in the name of Abrasive Waterjet Sdn. Bhd. It is noted that this is not the name of the 2nd defendant.

The account number nominated was 20049004486, at the plaintiff's bank.

It is the 1st defendant's contention that by transferring the monies into the account of Abrasive Waterjet Services Sdn. Bhd. (which is not the nominated account), the transaction amounts to an act of conversion by the plaintiff.

The 2nd defendant on the other hand, says that since they have an account (the account no. 20049004486) with the plaintiff, the validity of the transaction is therefore unquestioned. The 2nd defendant contends that the plaintiff has wrongly prevented it from operating its account by freezing the said account.

The 2nd defendant claimed that the monies deposited into its account with the plaintiff by the said cashier's order is for monies which represent a refund pursuant to the rescission of an agreement they had with the 1st defendant.

Faced with these countervailing claims, the plaintiff filed this application, hoping to resolve the conflict, pursuant to O. 17 r. 3, Rules of the High Court, 1980 ("RHC").

The Law

An application for an interpleader summons under O. 17 r. 3 commands strict compliance failing which no order will be made by the court. In fact, upon strict compliance under this rule, an order made thereunder will not normally be interfered with by an Appellate Court: *Chin Leong Soon & Others v. Len Chee Omnibus* [1970] 2 MLJ 228.

Order 17 r. 3, RHC reads as follows:

> (1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action in Form 31 or 32 whichever is appropriate.
>
> (2) No appearance need be entered to an originating summons under this rule.
>
> (3) Subject to paragraph (4), a summons under this rule must be supported by evidence that the applicant -
>
> (a) claims no interest in the subject-matter in dispute other than for charges or costs;
>
> (b) does not collude with any of the claimants to that subject-matter; and
>
> (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the court may direct.
>
> (4) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (3) unless directed by the court so to do.

Order 17 is actually a device where a person in possession of property or its proceeds of sale and he is, or expects to be, sued in respect thereof by two or more persons making adverse claims thereto, may apply to the court for an order requiring the claimants to litigate their differences and to abide by the court's final order in respect thereof.

He is then safeguarded by being able to act in respect of the property or its proceeds of sale consistently with, or as may be directed by, the court's final order. In these circumstances he is said to apply to the court for relief by way of interpleader. *De La Rue v. Hernu, Perom & Stockwell Ltd.* [1936] 2 KB 164.

Generally relief for interpleader summons is available in two classes of cases known traditionally as stakeholder's and sheriff's interpleader.

The present action would come within the class of stakeholder's interpleader, where relief is available in a situation where the applicant is under a liability in respect of a debt, or in respect of any money, goods or chattels, and he is, or expects to be, sued for in respect of that debt or money, or those goods or chattels by two or more persons making adverse claims thereto.

An interpleader relief is discretionary and cannot be claimed as of right *(Cave v. Capel)* [1954] 1 QB 367. However the applicant must first fulfil the necessary conditions in O. 17 r. 3 RHC 1980 and the claimants must have substantive claims thereto. In that regard, this court's jurisdiction is limited only by the terms of the relevant rules of court. *(Sun Insurance Office v.*

Galinsky) [1914] 2 KB 543, and if everything is in order the court's preponderance is towards granting the application. *(Gerhad v. Montagu & Co.)* [1889] 61 LT 564.

It is essential that before the applicant is granted relief, he is, or genuinely expects to be, sued by two or more persons, and there must be some real foundation for the said expectation. A mere anticipation, without any intimation having been received is not sufficient. *(Watson v. Park Royal Caterers Ltd)* [1961] 2 All ER 146.

The conflict between the claimants must be real in the sense that each claim, if proven, would give a good cause of action against the applicant, so that where the applicant is not under any obligation to one of the claimants, or where he can, without incurring any liability, pay the subject matter of the claim to one of the claimants, he is not entitled to relief (of interpleader).

Then again, a mere pretext of a conflicting claim is not enough and the court must be satisfied that there is a question to be tried *(Sun Insurance Office v. Galinsky)* [1914] 2 KB 545, where in the circumstances it was doubtful whether there was any genuine adverse claim.

The claims must be adverse in the sense of being claims to the whole or part of the same money or goods or things. They may arise out of the same transaction and still be so different as to prevent relief from being granted *(Greatorex v. Shackle)* [1895] 2 QB 249.

Looking again at O. 17 r. 3(3) RHC 1980, the 1st precondition to the granting of interpleader relief (r. 3(3)(a)), states that the plaintiff must show it has **no interest** in the subject matter in dispute other than for charges or costs. Such detachment must be disclosed to the court on the return of the summons. A singularly distinctive element is that the applicant must be a completely disinterested party in the proceeding, so that even a whiff of any partiality to any one party, would bar him from the relief sought for (*Murrieta v. South American Co.* [1893] 62 LJQB 396).

On the 2nd precondition (r. 3(3)(b)), it must be shown that the applicant does not **collude** with any of the claimants to the subject matter. Though the line between interest and collusion is tenuous, it is nevertheless obvious that there must be no identification of interest between the applicant and the claimant. Collusion does not necessarily envisage something which is morally wrong, but only that the applicant must not "play on the same side" as one of the claimants (*Murrieta's* case) as well as *Tucker v. Morris* [1832] 1 C&M 73 2 LJ Ex. 1.

The 3rd precondition speaks about the applicant's willingness to pay or transfer the subject matter into court or dispose of it as directed by court. This must be so stated in the applicant's affidavit.

The 1st defendant raised a preliminary objection on the interpleader summons on the grounds that the plaintiff had failed to comply with the preconditions in O. 17 r. 3(3).

This court had read the affidavit filed herein, particularly encl. 7 at para. 40 and encl. 8 at para. 25 (affidavits of the 2nd defendant), together with encl. 9 at para. 6 (the 1st defendant's affidavit). After having read these and after having considered the submission of parties and the authorities cited in support, this court finds no evidence where it could be inferred that the plaintiff was not neutral in this application. In other words, the plaintiff has no interest in this subject matter.

This is strengthened by para. 10 in the affidavit of Tan Keng Soon affirmed on 16 April 1998, where plaintiff states unequivocally that it has no interest whatsoever in the matter except with regard to its charges or costs.

Although it cannot be denied that the plaintiff may face a setback since the monies in the account is depleted and that it has to make good the full amount deposited, ie, RM650,000 to whoever is the rightful claimant, this cannot be construed as the plaintiff having an "interest" in the matter.

On the second pre-condition that there should be no collusion, looking at the facts as disclosed, this court finds no evidence whatsoever of collusion by the plaintiff.

The act of the plaintiff in depositing the monies into the 2nd defendant's account cannot amount to collusion with the 2nd defendant. This is borne out by the plaintiff's subsequent act of initiating action to freeze the account (rightly or otherwise), to stave off any further operation of the said account in view of the competing claims made on the monies.

The imputation of collusion levelled against the plaintiff by the 1st defendant therefore cannot be sustained.

It is the 1st defendant's contention that they are the true owners of the monies as represented in the cashier's order. The 1st defendant contends that the plaintiff should have been put on inquiry when the payee is not the nominated payee.

The 1st defendant cites *Woodland Development v. Chartered Bank* [1988] MLJ as authority in support.

The 1st defendant further submitted that by allowing withdrawals from the 2nd defendant's account up till 3 April 1998 even though the plaintiff was already put on notice on 2 April 1998 regarding the wrong crediting of the monies, the plaintiff had colluded with the 2nd defendant.

The 1st defendant also cited the case of *Murrieta v. South American Co.* [1893] 62 LJ QB 396 in support of this proposition.

However, looking at the case in *Murrieta*, it is clear that the facts are distinguishable from the present application since in *Murrieta*, there was an agreement for the applicant to resist the claim of the receiver.

The facts in *Murrieta* are as follows:

In an action by Messo Murrieta & Co. as individuals against the South American & Mexican Company for the 1st instalment of £10,000 under an agreement of 18 March 1892. The South American Co. had been negotiating to effect an amalgamation with Murrieta & Co. and there appeared to be a provision that if there was a liquidation of Murrieta & Co., the negotiation would be at an end. The agreement was to the effect *inter alia* that Messrs Murrieta would influence their company to go into liquidation in consideration of the South American Company paying certain unsecured creditors, alleged to be friends and relatives of the Messrs Murrieta, a sum of about £10,000. Soon after this the Murrieta Co. went into liquidation. A later agreement between the Messrs Murrieta and the South American Co. was arrived at in January 1893, whereby in effect the amount was to be reduced by more than £20,000 if the claims of the receiver could be resisted, and the South American Co. pledged themselves to loyally join in opposing his claims.

Counsel for the receiver urged that this order for an interpleader should be discharged on the ground – first, that the South American Co. had an interest in the result; and secondly, of collusion between them and Messrs Murrieta.

Counsel for the defendants stated that all they wanted was protection from having to pay the sum twice. If they paid, the Messrs Murrieta there might be a possibility of the receiver, on behalf of the company's creditor afterwards claiming from them the same sum.

It was held that the order could not stand. That the applicants had disentitled themselves to succeed in the application. Under the Rules of Court the applicant had to satisfy the court that he had no interest in the subject matter of the dispute. By the agreement here, if the claimant succeeded in the interpleader issue, the South American Co. would have to pay £100,000 altogether. But if the plaintiffs succeeded, they would have to pay some £20,000 less. Therefore, they had an interest in the subject matter. In addition

to that there was the stronger ground of collusion. The plaintiffs had entered into an agreement with the South American Co. by which they bound themselves to defeat the claim of the receiver. Could it be said they are not colluding? "Colluding" meant in its literal meaning, playing the same game. This was exactly what the two parties agreed to do. It had been held that giving indemnity was equivalent to collusion within the meaning of the interpleader order. The stakeholders should be impartial. Here they had bound themselves to a large amount to take the side of one party and to defeat the claim of the other. Here there was collusion sufficient to deprive the applicants of the benefit of the rule.

Thus *Murrieta* has no application to the present case, since there is no such agreement in the present case, and it is doubtful whether there is a proper allegation by the 1st defendant of collusion, save for the affirmation in para. 5.2 of encl. (6).

This court finds that in succumbing to laches such as can be seen above, the plaintiff in not disentitled to the fulfilment of O. 17 r. 3 RHC.

So from the facts adduced, this court is satisfied that there is no collusion between the plaintiff and any other party to this application.

The final pre-condition is satisfied, where the plaintiff states in its affidavit that it is willing to pay the monies into court or to dispose of it in such manner as the court thinks fit.

In that connection, after having read the affidavits filed and after having considered all the facts therein, this court is satisfied that O. 17 r. 3(3) RHC 1980, has been complied with.

However, this court is hard put to grant the plaintiff the relief sought for, due to there being no real expectation of being sued by at least two persons. In this application the 1st defendant may have a cause of action against the plaintiff since they hold the title to the cheque, but the same cannot be said for the 2nd defendant for the following reasons:

At the risk of being repetitive, it is reiterated that the cashier's order is crossed with the words "Account Payee" and "Not Negotiable".

The practice of crossing cheques in this manner have caught on and is now quite common place, since it is thought that it affords better protection to the drawer of a cheque against the consequences of it being stolen or lost.

Previous to the amendment to the Bills of Exchange Act 1949, such crossings do not affect the negotiability of the cheque, as was decided in *National Bank v. Silke* [1891] 1 QB 435.

In *Mahadevan & Anor v. Manilal & Sons (M) Sdn Bhd* [1984] 1 MLJ 266, the Federal Court observed that the negotiability of a cheque was not affected by being crossed with the words "Account Payee" only. Salleh Abbas, CJ said:

> "The A/C Payee only" crossing is only a direction by the drawer, in this case the respondent, to the collecting bank, i.e. the Mercantile Bank into which the cheque was paid, that when it received the proceeds of the cheque from the paying bank it must place them in the account of the named payee, in this case, M/S Ong Huck Lim & Co. If the collecting bank received the proceeds for any other customer than the one named in the cheque, it ran the risk of being sued for negligence and could not avail itself of the protection under section 85 of the Bills of Exchange Act 1949. In any case, the crossing "A/C Payee only" does not prevent the cheque from being transferable or have the effect of making it not negotiable.

The position of crossed cheques however takes on a different dimension with the recent amendment to the Bills of Exchange (Amendment) Act 1998 where s. 81A states:

> 81.A Where a cheque is crossed and bears across its face the words "account payee" or "a/c payee", either with or without the word "only", the cheque shall not be transferable, but shall only be valid as between the parties thereto.

This takes away the right to transfer the instrument from hand to hand. Such an instrument is no longer a negotiable instrument since its validity is restricted to the parties thereto. It becomes in effect, a "Pay Order" to the bank by a drawer to the named payee only.

The situation may be exemplified in the old authority of *The Rubber Industry Board v. Hongkong & Shanghai Banking Corporation* [1957] MLJ 103.

The facts were briefly that the plaintiff issued a cheque in favour of one Toh Whye Teck in the sum of $6,762.33 and the cheque was marked "Account Payee only". In some way unknown to the plaintiff the cheque came into the possession of some unauthorised person. Subsequently, one Lee Man Choi opened an account with the defendant bank in the name of Chop Toh Waye Teck and the cheque in favour of Toh Whye Teck was paid into the account. The plaintiff claimed damages.

It was held by Buhagiar J, that in the circumstances of the case, there had been **no delivery** (my emphasis) of the cheque to the payee and therefore the plaintiffs remained the true owner and were entitled to maintain the action.

It is emphasised that the nominated payee is Abrasive Waterjet Sdn. Bhd. and not the 2nd defendant.

The omission of the word "Services" in the company's name is not a mis-spelling or a mistake, since the two companies (Abrasive Waterjet Sdn. Bhd. and Abrasive Waterjet Services Sdn. Bhd.) are two completely different entities.

The cashier's order is crossed and by virtue of s. 81A therefore, the validity of the cashier's order is restricted to the parties thereto (ie, between the **drawer** and the **nominated payee**).

Thus, there is **no** delivery of the cashier's order to the 2nd defendant and the 1st defendant remains the true owner thereof.

More importantly, the plaintiff in the present application, must show that the 2nd defendant's claim provides a real foundation for the expectation to be sued. Since there is no delivery of the cashier's order to the 2nd defendant, the 2nd defendant has no basis for a claim as opposed to the claim of the 1st defendant, against the plaintiff.

The dissenting judgment of Ali FJ in *Chin Leong Soon v. Len Chee Omnibus Co. Ltd. & Anor* [1970] 2 MLJ 228 is referred and followed. Briefly the facts were that the appellants who are the administrator of the estate of Low Hon, deceased, had brought an action to have their names as administrators entered in the 1st respondent company's register in respect of 20 ordinary shares of which the deceased was the registered owner. The 1st respondent did not deny the appellant's claim but stated that one Chan Sow Lan (f) was also claiming to be the owner of the shares. The 1st respondent took out an interpleader summons and an order was made in the High Court granting them leave by way of interpleader and directly the trial of an issue between the appellants and the 2nd respondent (the claimant in the court below) with regard to the title to the 20 shares in the 1st respondent company and dividends and shareholders' allowance in respect of the said shares.

The main question to be decided in this appeal was whether all the conditions mentioned in O. 57 rr. 1 & 2 (which is in parameter with O. 17 r. 3) existed in the present case.

Ali FJ (dissenting) observed that:

> ... it would appear from the judgment (of the court below) that the learned Judge had found that both the appellant and Chin Sow Lan have substantive claims against the respondent Company ...
>
> ... Her claim is not based on any established rights. Quite clearly it cannot be based on the right of a transferee under section 103(1) of the Companies Act because no proper instrument of transfer has been delivered or is likely to be

> delivered. Her claim is founded on the allegation that her mother has no right to the shares. Towards this end she must not only prove her allegations but also decide upon the form of action which she proposes to take as would result in her being placed on the register as a shareholder.
>
> ... Her claim is not a straight forward claim for registration. If she decides to pursue this claim against the Company, the Company could only expect that her action would be in respect of a liability for having negligently registered a wrong person as the shareholder.
>
> The respondent Company seeking interpleader relief must make out a case for relief. In this case it must be shown that Chin Sow Lan's claim provides a real foundation for expectation to be sued. It is not enough for the Company to say that Chin Sow Lan has made a claim. Were it otherwise the object of granting interpleader relief would be repeated. On record the Company seems to have nothing more than the letter dated 14/8/69 from Chin Sow Lan's solicitors giving notice of her claim on which the foundation for the expectation to be sued can be founded. This letter contains no reason for the claim. They did not inquire. Such an inquiry if made, would reveal that Chin Sow Lan has no established right to be registered as a shareholder in as much as she is unable to deliver a proper instrument of transfer. It becomes manifestly clear during the hearing of interpleader summons that until Chin Sow Lan **proves** her allegations, there can be no basis for the foundation for the expectation to be sued.

Likewise in the present application, this court finds that in view of the non-delivery of the cashier's order to the 2nd defendant, the 2nd defendant has no title to the cashier's order and the 1st defendant remains the true owner of the cashier's order.

The plaintiff can expect to be sued by one party, ie, the 1st defendant but in view of there being no title passed to the 2nd defendant, it is unlikely that the 2nd defendant can stand a ghost of a chance to sue the plaintiff. There is therefore no foundation for the expectation to be sued. The 2nd defendant moreover has no substantive claim against the plaintiff.

The court is mindful that on the hearing of an application of an interpleader summons, this court is not required to go into the merits of any defence which might be raised in the action before exercising this court's discretion to grant or refuse the interpleader relief.

Since, in the words of Edmund Davis J in *Watson v. Park Royal (Caterers) Ltd* [1961] 2 All ER 346 at p. 352, that:

> there is ample authority for the proposition that the discretionary relief of interpleader will not be granted unless there appears to be some real foundation for the expectation of a rival claim ...

and since the plaintiff had failed to establish any basis for the 2nd defendants claim and bearing in mind that in an interpleader summons the object is to protect a party against a double vexation in respect of one's liability, in the circumstances, this court is therefore unable to afford the plaintiff the relief sought for.

Thus this court orders that:

(1) The plaintiff's application be dismissed with no order as to costs.

(2) It is for any interested party to initiate proceedings to determine the issue in this matter.

(3) The *status quo* of the 2nd defendant's account with the plaintiff be maintained.